

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESale PRICE)	
LITIGATION)	MDL No. 1456
)	Civil Action No. 01-12257-PBS
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)	
THIS DOCUMENT RELATES TO:)	Hon. Patti B. Saris
)	
<i>United States of America, ex rel. Ven-a-Care</i>)	
<i>of the Florida Keys, Inc. v. Abbott</i>)	
<i>Laboratories, Inc.,</i>)	
CIVIL ACTION NO. 06-CV-11337-PBS)	

**CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT AND OPPOSITION TO
ABBOTT LABORATORIES INC.'S PARTIAL MOTION FOR SUMMARY JUDGMENT**

The United States opposes the motion for summary judgment filed by defendants Abbott Laboratories Inc. (Abbott). Docket No. 6185. The United States further cross-moves for partial summary judgment under the False Claims Act (FCA), 31 U.S.C. §§ 3729-3733, against Abbott that (1) Abbott's reported average wholesale prices ("AWPs") for the Subject Drugs were false; (2) Abbott "knowingly" reported such false prices under the FCA; (3) Abbott's false AWPs for the Subject Drugs constituted false statements and caused the submission of false claims to the Medicaid program and caused the State programs to submit false claims to the federal government for federal monies; and also that (5) Abbott's Sixth (release), Eleventh (laches, estoppel and waiver), Twenty-Fifth (a failure to mitigate damages), Thirty-Eighth (government knowledge), and Forty-First (contributory or comparative fault) Affirmative Defenses do not absolve Abbott of liability under the FCA.

The United States is filing an accompanying brief detailing issues of law that are common to the three cases in which the United States intervened, as well as a "common" L.R. 56.1 Statement of Undisputed Facts. In opposition to Abbott's Motion for Summary Judgment and in

support of its own motion, the United States files the accompanying Memorandum of Law, focusing on applying the law to the facts in the Abbott case. The United States also submits its Response to the Abbott Local Rule 56.1 Statement; Declaration of Mark A. Lavine transmitting Documents Relied On in the United States' Cross-Motion for Summary Judgment and in the United States' Response to the Abbott Local Rule 56.1 Statement; and the United States' Local Rule 56.1 Statement of Undisputed Material Facts of Record.

WHEREFORE the United States asks that this Motion be granted and that the Court grant summary judgment in favor of the United States that:

(1) Abbott's reported average wholesale prices ("AWPs") for the Subject Drugs were false;

(2) Abbott "knowingly" reported such false prices under the FCA;

(4) Abbott's false AWPs for the Subject Drugs constituted false statements and caused the submission of false claims to the Medicaid program and caused the State programs to submit false claims to the federal government for federal monies; and

(5) Abbott's 's Sixth (release), Eleventh (laches, estoppel and waiver), Twenty-Fifth (a failure to mitigate damages), Thirty-Eighth (government knowledge), and Forty-First (contributory or comparative fault) Affirmative Defense of failure to mitigate and consent does not absolve Abbott of liability under the FCA.

The grounds for this motion are set forth in the accompanying United States' Consolidated Memorandum of Law in Support of Motion For Partial Summary Judgment and in Opposition to Defendants' Motion For Partial Summary Judgment and the United States' Common Memorandum of Law in Support of Cross-Motions for Partial Summary Judgment and in Opposition to the Defendants' Motions for Summary Judgment. The United States also submits a Local Rule 56.1 Statement of Undisputed Material Facts as to Dey, together with exhibits thereto, and a Local Rule 56.1 Statement of Undisputed Material Facts Common to All Defendants, together with exhibits thereto. Relator joins in this Motion.

Respectfully submitted,

For the United States of America,

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I hereby certify that I have this day caused an electronic copy of the above **UNITED STATES' CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT AND OPPOSITION TO ABBOTT LABORATORIES INC.'S PARTIAL MOTION FOR SUMMARY JUDGMENT** to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

Dated: July 24, 2009

/s/ Mark Lavine
Mark Lavine